



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 14-C0001]

Forman Mills, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Forman Mills, Inc., containing a civil penalty of \$600,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (insert date that is 15 calendar days from publication date).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 14-C0001 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Sean R. Ward, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7602. SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 26, 2014.

Todd A. Stevenson,
Secretary.

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of:)	
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)	CPSC Docket No.: <u>14-C0001</u>
Forman Mills, Inc.)	
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SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2089 and 16 CFR 1118.20, Forman Mills, Inc. (Forman Mills), and the U.S. Consumer Product Safety Commission (Commission), through its staff (staff), hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA. By executing this Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Forman Mills is a corporation, organized and existing under the laws of the state of Pennsylvania, with its principal corporate office located in Pennsauken, NJ. Forman Mills is a retailer, selling a wide selection of low-priced designer clothing.

STAFF CHARGES

4. Between June 2007 and February 2010, Forman Mills sold and/or held for sale four series of Garments, consisting of approximately 2,105 children's upper outerwear garments with drawstrings (Garments) to consumers. Forman Mills sold the Garments to consumers and/or held the Garments for sale with the intent to ultimately sell to consumers. The Garments were sold at retail stores in the United States for between \$5 and \$100.

5. The Garments are "consumer products" and, at all relevant times, Forman Mills was a "retailer" of these consumer products, which were "distributed in commerce," as those terms are defined or used in sections 3(a)(5), (8), and (13) of the CPSA, 15 U.S.C. 2052(a)(5), (8), and (13).

6. In February 1996, staff issued the *Guidelines for Drawstrings on Children's Upper Outerwear* (Guidelines) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items, such as playground equipment, bus doors, or cribs. In the Guidelines, staff recommends that no children's upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816-97, incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance directed to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816-97. The letter also states

that staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (FHSA) section 15(c), 15 U.S.C. 1274(c). The letter references the CPSA's section 15(b), 15 U.S.C. 2064(b), reporting requirements.

9. In April 2009, the Commission issued an Order wherein Forman Mills agreed to pay a civil penalty of \$35,000 to settle staff's charges that the Firm failed to report children's upper outerwear products with drawstrings that it distributed in commerce. Throughout the course of that civil penalty matter, Forman Mills received repeated reminders about the drawstring hazards and applicable law.

10. Forman Mills' distribution in commerce of the Garments did not comply with the 1996 staff Guidelines, ASTM F1816-97, or staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. Forman Mills' distribution of three of the series of garments with drawstrings (Weeplay Kids, Lollytogs and 5 Star Apparel) occurred in part, during the same period of time as the investigation and negotiation of Forman Mills' 2009 civil penalty matter, which also involved garments with drawstrings.

12. On January 6, 2009 (the unit count was revised February 14, 2011), February 18, 2010, April 8, 2010, and May 27, 2010, the Commission and four U.S. importers announced four separate recalls of the Garments that were distributed in commerce by Forman Mills. Forman Mills was identified as a retailer of the Garments in one of the four press releases announcing the recalls.

13. Based in part on information available through the sources set forth in paragraphs six through eight herein, Forman Mills had presumed and actual knowledge that the Garments

distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Forman Mills obtained information that reasonably supported the conclusion that the Garments contained defects that could create substantial product hazards or that the Garments created unreasonable risks of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), Forman Mills was required to inform the Commission immediately of these defects and risks.

14. Despite having actual and presumed knowledge of the hazards and risks, Forman Mills did not file any report with the Commission regarding the Garments, as required by section 15(b) of the CPSA, 15 U.S.C. §2064(b).

15. Forman Mills knowingly and repeatedly failed to immediately inform the Commission about the Garments, as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term “knowingly” is defined in CPSA section 20(d), 15 U.S.C. 2069(d). These knowing failures violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, these knowing failures subjected Forman Mills to civil penalties.

FORMAN MILL’S RESPONSE

16. This Agreement is in settlement of the staff’s charges and does not constitute an admission by Forman Mills to the charges set forth in paragraphs 4 through 15, including, but not limited to, the charge that the Garments contained a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and the contention that Forman Mills failed to notify the Commission in a timely manner, in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b).

17. Forman Mills is not a manufacturer, but is a retailer of a wide range of products in many sizes, types, and styles including some children's garments. During the time period covered by the staff allegations, it purchased from thousands of vendors well over 100,000 SKUs and more than 25 million garments annually. Like most retailers, Forman Mills required its suppliers to provide garments that complied fully with all relevant laws, regulations and standards, and relied on its suppliers to abide by these requirements.

18. By December 2008, Forman Mills, rather than relying solely on suppliers to fulfill their contractual obligations, had instituted new buying, receiving and inventory control procedures to reduce the possibility that children's garments with drawstrings might end up on its shelves.

19. All of the Garments cited by the staff in their allegations in paragraphs 4-15 above were purchased before those new procedures went into effect. In fact, CPSC knew about the firm's 2007 purchase of approximately 840 of those Garments by December 2008 when staff was negotiating a civil penalty settlement with Forman Mills. Staff decided not to pursue civil penalties regarding the subsequent violation at that time but reserved the right to reopen this matter and seek civil penalties should there be future violations. Forman Mills' denies that its buyers or other responsible personnel had either actual or constructive knowledge that it had purchased and sold the Garments until it was informed of that by the publically announced recalls on January 6, 2009, February 18, 2010, April 8, 2010, and May 27, 2010.

20. By the time Forman Mills settled the previous civil penalty matter, most of the Garments were already sold. Forman Mills disputes any staff charge that it had knowledge or even a reasonable way to become aware of the remaining Garments, or of previous sales of the Garments. Because it could not reasonably have known about the existence of drawstrings in the

Garments, Forman Mills denies the staff allegations that it in fact had an obligation to report and or “knowingly” failed to report. Forman Mills has advised the Commission that it is unaware of any reports of incidents or injuries associated with the Garments

21. Forman Mills enters into this agreement to settle this matter without the expense and likely disruptions of its business that might result from litigation. In settling this matter, Forman Mills does not admit any of the staff factual or legal allegations nor concede that a penalty in the amount agreed to is appropriate.

AGREEMENT OF THE PARTIES

22. Under the CPSA, the Commission has jurisdiction over the matter involving the Garments described herein and over Forman Mills.

23. In settlement of staff’s charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Forman Mills shall pay a civil penalty in the amount of six hundred thousand dollars (\$600,000.00) within twenty (20) calendar days after receiving service of the Commission’s final Order accepting the Agreement. The payment shall be made electronically to the Commission via: www.pay.gov.

24. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Forman Mills or a determination by the Commission that Forman Mills violated the CPSA.

25. Following staff’s receipt of this Agreement executed on behalf of Forman Mills, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 CFR 1118.20(e). If within fifteen (15)

calendar days the Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 CFR 1118.20(f).

26. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) The Commission's final acceptance of this Agreement and service of the accepted Agreement upon Forman Mills; and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

27. Effective upon the later of: (i) The Commission's final acceptance of the Agreement and service of the accepted Agreement upon Forman Mills; and (ii) the date of issuance of the final Order, for good and valuable consideration, Forman Mills hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in the Agreement: (a) An administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether Forman Mills failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

28. Forman Mills has already taken steps to reduce the possibility of the purchase and sale of children's garments with drawstrings and shall fully implement and maintain a compliance program designed to ensure compliance with the statutes and regulations enforced by the Commission. That program will include at a minimum, the following elements: (i) Written standards and policies; (ii) procedures for implementing corrective and preventive actions when

compliance deficiencies or violations are identified; (iii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iv) effective communication of company compliance-related policies and procedures to applicable employees through training programs or otherwise; (v) senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission; (vi) board oversight of compliance (if applicable); and (vii) retention of all compliance-related records for at least five (5) years after the Commission has issued the Final Order and availability of such records to staff upon request.

29. Forman Mills shall maintain and enforce a system of internal controls and procedures designed to ensure that: (i) Information required to be disclosed by Forman Mills to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete and accurate; and (iii) prompt disclosure is made to Forman Mills' management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect Forman Mills' ability to record, process and report to the Commission in accordance with applicable law.

30. Upon reasonable request of staff, Forman Mills shall provide written documentation of such improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls. Forman Mills shall cooperate fully and truthfully with staff and shall make available all information, materials, and personnel deemed necessary by staff to evaluate Forman Mills' compliance with the terms of the Agreement.

31. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

32. Forman Mills represents that the Agreement: (i) Is freely and voluntarily entered into, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Forman Mills, and each of its successors and/or assigns, enforceable against Forman Mills in accordance with its terms. The individuals signing the Agreement on behalf of Forman Mills represent and warrant that they are duly authorized by Forman Mills to execute the Agreement.

33. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute this Agreement.

34. The Agreement is governed by the laws of the United States.

35. The Agreement and the Order shall apply to, and be binding upon, Forman Mills and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject Forman Mills and each of its successors, transferees, and assigns, to appropriate legal action.

36. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

37. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

38. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

39. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Forman Mills agree that severing the provision materially affects the purpose of the Agreement and Order.

Forman Mills, Inc.

Dated: March 11, 2014.

Richard P. Forman,
CEO and President,
Forman Mills, Inc.,
1070 Thomas Busch Memorial Highway,
Pennsauken, NJ
08110.

Dated: March 12, 2014.

Eric L. Stone,
Law Office of Eric Stone, LLC,
14524 Kings Grant St.,
North Potomac, MD 20878,
Counsel for Forman Mills, Inc.

U.S. Consumer Product Safety
Commission Staff.

Stephanie Tsacoumis,
General Counsel,

(continued on next page)

Mary B. Murphy,
Assistant General Counsel.

Dated: March 12, 2014.

Sean R. Ward,
Trial Attorney,
Division of Compliance,
Office of the General Counsel.

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:

Forman Mills, Inc.

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) CPSC Docket No.: 14-C0001
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ORDER

Upon consideration of the Settlement Agreement entered into between Forman Mills, Inc. (Forman Mills), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over Forman Mills, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that Forman Mills shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of six hundred thousand dollars (\$600,000.00) within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made electronically to the CPSC via: www.pay.gov. Upon the failure of Forman Mills to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Forman Mills at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If Forman Mills fails to make such payment or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

(continued on next page)

Provisionally accepted and provisional Order issued on the 26th day of March, 2014.

By Order of the Commission:

Todd A. Stevenson, Secretary,
U.S. Consumer Product Safety Commission.

[FR Doc. 2014-07099 Filed 03/28/2014 at 8:45 am; Publication Date: 03/31/2014]